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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/966,413	09/28/2001	George G. Pappas	LUM 180	4358

7590

06/27/2003

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EXAMINER

COCKS, JOSIAH C

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 06/27/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/966,413

Applicant(s)

PAPPAS, GEORGE G.

Examiner

Josiah C. Cocks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on amendment filed 4/23/03.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Response to Amendment*

1. Receipt of applicant's amendment filed 4/23/03 is acknowledged.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3-13, 16, 17, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Henze* (US # 4,917,597) in view of *Pappas* (US # 5,842,850).

*Henze* discloses in Figure 1 a freestanding candle (2) having a wick (3), a flame-resistant sheet (insulator sheet 6) joined/attached to the fuel body in proximity to a lower end of the wick, and a wick support (4) contacting the sheet and holding the lower end of the wick (see Fig. 1).

*Henze* further discloses that the insulator layer (6) may be formed on the entire bottom surface of the wax candle/insert (2) (see col. 2, lines 23-28) and is regarded as being joined.

*Henze* possibly does not disclose that the wick support is sealingly bonded to the sheet to create a liquid fuel flow barrier, has an adhesive backing, the wick support is formed *in situ* unitarily with the wick, a flame-resistant agent impregnating the lower end of the wick, or the

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wick support is above the sheet sufficient to prevent a candle fire and specifically at least about half an inch.

*Pappas* teaches a wick support (40) that is sealingly bonded to its support layer by means of a plug (24) forming a liquid fuel flow barrier that also functions to form a support that is formed *in situ* unitarily with the wick (see Fig. 7) and forms a flame resistant agent at the lower end of the wick (see col. 3, lines 38-48) and a wick support in the form of pedestal (90) that is attached to its support by adhesives (see col. 4, lines 38-41). *Pappas* further teaches that the wick support is high enough (i.e. at least half an inch) to prevent a candle fire (see col. 3, line 65 through col. 4, line 19).

Therefore, in regard to claims 1, 3-13, 16, 17 and 24, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the wick support of *Henze* to incorporate the structure of the wick support of *Pappas* as this structure serves to permit the wax to be consumed before flame goes out from lack of fuel and prevents an unsafe flashover condition (see *Pappas*, col. 1, lines 38-59).

4. Claims 14, 15, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Henze* (US # 4,917,597) in view of *Pappas* (US # 5,842,850) as applied to claim 1 above, and further in view of *Gentry* (US # 3,317,290).

*Henze* in view of *Pappas* teach all the limitations of claims 14, 15, and 18 except that the sheet has a peripheral rim and is corrugated.

*Gentry* teaches a heat resistant sheet that has a peripheral rim/flange (20) and is corrugated (14).

Therefore, in regard to claims 14, 15, and 18, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the sheet of *Henze* to incorporate the sheet of *Gentry* as the peripheral flange and corrugations serve to form an enlarged chamber for holding a combustible fuel body (see *Gentry*, col. 2, lines 16-38).

5. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Henze* (US # 4,917,597) in view of *Pappas* (US # 5,842,850) as applied to claim 1 above, and further in view of *Pietruch et al.* (US # 6,155,451).

*Henze* in view of *Pappas* teach all the limitations of claim 19 except that the sheet is dome-shaped.

*Pietruch et al.* teach a lower sheet (148a) that is dome-shaped (see Figs. 7-8).

Therefore, in regard to claim 19, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the sheet of *Henze* to incorporate the dome shape of *Pietruch et al.* as the dome configuration desirably results in a savings of total wax required (see *Pietruch et al.*, col. 8, lines 55-65).

6. Claims 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Henze* (US # 4,917,597) in view of *Pappas* (US # 5,842,850) as applied to claim 1 above, and further in view of *Hamblet* (US # 2,310,019).

*Henze* in view of *Pappas* teach all the limitations of claims 20 and 21 except for multiple wicks.

As shown in *Hamblet*, it is well known in the art that candles may have multiple wicks (22).

Therefore, in regard to claims 20 and 21, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the candle of *Henze* to incorporate the multiple wicks of *Hamblet* to provide greater light than a single candle (see *Hamblet*, col. 2, lines 8-15).

7. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Henze* (US # 4,917,597) in view of *Pappas* (US # 5,842,850) as applied to claim 1 above, and further in view of *Chambers et al.* (US # 5,961,318).

*Henze* in view of *Pappas* teach all the limitations of claim 22 except that the wick support is crimped.

*Chambers et al.* teaches a candle wick support that is crimped (see Fig. 2 and col. 3, lines 1-17).

Therefore, in regard to claim 22, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the wick support of *Henze* to incorporate the crimp of *Chambers et al.* for the desirable purpose of restricting the amount of fuel flow through the wick support to allow the wick to self-extinguish before the flame approaches the surface of a candle holder (see Abstract).

8. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Henze* (US # 4,917,597) in view of *Root* (US # 1,863,416).

*Henze* discloses a method of forming an upright wick support on a wick of a freestanding candle comprising bonding/fastening an end region of a wick to a flame-resistant sheet (4) (see col. 2, lines 33-34).

*Henze* does not disclose impregnating in advance an end region of the wick with a flame-resistant sealant.

*Root* teaches a method of forming a wick support in the same field of endeavor as *Henze* wherein the method *Root* includes impregnating in advance an end region of the wick with a flame-resistant sealant (see page 4, lines 29-35).

Therefore, in regard to claim 23, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the method of *Henze* to incorporate the impregnating step of *Root* for the desirable purpose of allowing the wick to extinguish itself when it burns down to the impregnated portion (see *Root*, page 4, lines 25-28).

### ***Response to Arguments***

9. Applicant's arguments filed 4/23/03 in regard to claims 1 and 3-22 have been fully considered but they are not persuasive. Applicant's arguments with respect to claim 23 have been considered but are moot in view of the new ground(s) of rejection.

Applicant argues on page 8 of the response that the candle of *Henze* is not a "freestanding candle." The term freestanding is simply a statement of intended use and does not define any specific structure. Further, the term "freestanding" is understood in the art to not exclude the use of a container surrounding the candle (see *Pappas*, col. 5, lines 5-6). As applicant notes on page 8, "freestanding" candles are often combined with a tray or a dish. In the *Henze* reference, while

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the inner candle portion (2) is being combined with an outer container (5), the inner candle portion (2) is separate from the container and is still regarded as a “freestanding” candle.

Applicant also argues that *Henze* does not have its flame resistant sheet joined to the fuel body. However, as noted in item 3 above, *Henze* clearly discloses that the insulating layer may be formed on the bottom surface of the wax candle insert (2) and is therefore “joined” to the bottom of the candle insert.

Applicant also argues that *Henze* does not show its wick support attached to the flame resistant sheet. However, as shown in Fig. 1 of *Henze* the wick support (4) is located a bottom portion of candle (2) when the insulating layer is formed on the bottom surface of the wax candle, as noted above, the wick support is regarded as being attached to the insulating layer.

Applicant further argues on page 9 of the response that the “support layer” of *Pappas* is distinct from a “flame resistant sheet” as claimed. However, when *Henze* is modified to incorporate the wick support sealing bond of *Pappas* the wick support would be sealingly bonded to the flame-resistant layer (6) of *Henze*.

### ***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (703) 305-0450. The examiner can normally be reached on weekdays from 7:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett, can be reached at (703) 308-0101. The fax phone numbers for this




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Group are (703) 308-7764 for regular communications and (703) 305-3463 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

jcc  
June 24, 2003



JOSIAH COCKS  
PATENT EXAMINER  
ART UNIT 3743